In the Supreme Court of the United States

OCTOBER TERM, 1969

No. 1502

WALLACE EUGENE MCGEE, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

On March 15, 1968, petitioner was convicted in the United States District Court for the Middle District of Tennessee (282 F. Supp. 550) of violating the federal statutory provisions relating to the registration and operation of a distillery (*e.g.*, 26 U.S.C. 5171 *et seq.*). The court of appeals affirmed *per curiam* (Pet. App. 5).

Petitioner acknowledges that the stipulated facts submitted to the trial court sustain the court's finding of guilt. The sole issue presented here is whether petitioner could properly claim that compliance with the statutory provisions relating to the registration of distilleries would have violated his privilege against self-incrimination. That issue is discussed at some

length in the government's brief in opposition in *Dryden, et al.* v. *United States,* No. 1462, this Term. As there explained, no Fifth Amendment privilege question arises from application of the statutory scheme relating to the liquor industry. Those involved in that business engage in activities which are basically non-criminal in character and appropriate for governmental regulation. The statutes are not disguises for obtaining incriminating disclosures; nor do they affect only a select group inherently suspect of criminal activities. The rationale of the cases on which petitioner seeks to rely (*Marchetti* v. *United States,* 390 U.S. 39, and like decisions) is thus inopposite.

Thus, for the reasons discussed more fully in our brief in opposition in *Dryden* and in the court of appeals' opinion in *United States* v. *Whitehead,* No. 18607 (C.A. 6), decided March 3, 1970 (set out at Pet. App. 6–25),[1] on which we here rely, it is respectfully submitted that the petition for a writ of certiorari be denied.

ERWIN N. GRISWOLD,
Solicitor General.

MAY 1970.

[1] In the instant case the court below stated that the *Whitehead* case "is controlling as to the central issue presented in the present appeal * * *" (Pet. App. 5).

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